

May 2005

**Section 46
Environmental Protection Act
R.S.O. 1990**

Operational Guidance for Obtaining

Environmental Protection Act

Section 46 Approval for the use of Lands

Previously used for Disposal of Waste

**CONTENTS OF THIS DOCUMENT ARE SUBJECT
TO CHANGE WITHOUT NOTICE**

PIBS 5136e

Protecting our environment.



TABLE OF CONTENTS

1.0	INTRODUCTION	1
1.1	Objective	1
1.2	Site Re-Use Considerations	1
1.2.1	Environmental Concerns.....	1
1.2.2	Suitable Land Use	2
2.0	APPLICATION OF SECTION 46	3
2.1	Definitions.....	3
2.2	Lands Used for Waste Disposal (Certified and Non-Certified).....	4
2.3	Exceptions.....	4
2.4	Excavation of Wastes.....	5
3.0	GENERAL REQUIREMENTS FOR AN EPA SECTION 46 APPROVAL.....	6
3.1	Indemnification	6
3.2	Technical	6
3.3	Environmental Bill of Rights (EBR)	7
3.4	Agreements	7
3.5	Registration	7
3.6	Summary of Responsibilities	8
4.0	PROPONENTS' RESPONSIBILITIES	9
4.1	Contact the Ministry of the Environment	9
4.2	Supporting Studies and Documentation.....	9
4.3	Verification of Conditions Associated With Approval.....	10
5.0	MINISTRY OF ENVIRONMENT INVOLVEMENT.....	10
5.1	Application of EPA section 46	10
5.2	Section 46 Technical Review.....	10
5.2.1	Consultants' Studies.....	10
5.2.2	Gas and Leachate Controls/Buffer Area	10
5.2.3	Monitoring and Inspections	10
5.3	Records	11
5.4	Ontario Water Resources Act (OWRA) Exemptions	11
5.5	Section 46 Administrative Procedures.....	11
6.0	REQUIRED SUPPORTING INFORMATION.....	11
6.1	General.....	11
6.2	Technical.....	12
6.3	Exceptions for Detailed Studies.....	13

7.0	PUBLIC SAFETY	13
7.1	General.....	14
7.2	Ministry of the Environment.....	14
7.3	Planning Approval Authority.....	14
7.4	MNR Waste Sites on Crown Land.....	15
8.0	PLANNING APPROVAL AUTHORITY.....	15
8.1	Site Specific Plan Review	15
8.2	Site Re-Use	15
8.3	Identifying Landfill and Dump Sites	16
8.4	Endorsement of Proposed Use.....	17
8.5	Land Use Planning Approvals/Permits.....	17
8.6	Waste Disposal More Than 25 Years Ago	17
8.7	Municipal Tools for Public Safety	18
8.7.1	Ontario Building Code (Regulation under the <i>Building Code Act</i>)	18
8.7.2	Planning Act.....	18
8.7.3	Other Possible Sources of Controls	18
9.0	APPROVALS, CONDITIONS, AGREEMENTS AND COMPLIANCE	19
9.1	Approvals Hierarchy	19
9.2	Section 46 Approval-Related Conditions	19
9.3	Approaches for Inclusion and Enforcement of Conditions of Approval	19
9.3.1	Environmental Protection Act, RSO 1990.....	19
9.3.2	Planning Act, RSO 1990.....	20
9.3.3	Other Municipal Legislation	20
9.4	Ministry Certificates of Approval.....	20
9.5	Signing Agreements.....	21
10.0	REGISTRATION ON TITLE.....	21
10.1	Requirement for Registration on Title	21
10.2	Verification of Registration on Title.....	21
10.3	Section 46 Approvals and EPA Section 197.....	21
10.4	Site Plan/Survey.....	22
10.5	Certified Waste Disposal Sites.....	22
11.0	REFERENCE DOCUMENTS.....	22
APPENDIX		
A	Generic Indemnification Agreement.....	24

1.0 INTRODUCTION

The purpose of this operational guidance document is to provide Ministry staff and other organizations and interests involved in land use with direction on requirements and restrictions for proposed use of lands previously used for disposal of waste, to ensure that the intent of the Ministry's legislation is met. This guidance document details various roles, responsibilities, mechanisms and processes directly related to obtaining approval for use of those lands.

Section 46 of the Environmental Protection Act (EPA) requires the Minister's approval for use of lands previously used for the disposal of waste in order to protect the health and welfare of the general public from potential hazards relating to those lands. Section 46 states that *"No use shall be made of land or land covered by water which has been used for the disposal of waste within a period of twenty-five years from the year in which such land ceased to be so used unless the approval of the Minister for the proposed use has been given."* R.S.O. 1990, c.E.19, section 46.

A decision on a requested Section 46 Approval is made at the discretion of the Minister. The Minister may request additional information as part of her/his consideration of the request. It should be noted that there is no guarantee that an approval will be issued.

1.1 Objective

The Ministry's objective is the safe use of land, and avoidance or elimination of situations which may result in adverse effects for potential on-site users and nearby lands and their uses.

1.2 Site Re-Use Considerations

1.2.1 Environmental Concerns

For a proposed use of lands occupied by any landfill, waste disposal site or dump, each factor identified below must be assessed, in relation to the nature of the proposal.

(a) Health/Safety Risks

Factors which may pose a health or safety risk when a use is proposed on lands previously used for waste disposal may include:

- (i) the presence of ground and surface water that has been contaminated by leachate;
- (ii) surface water run-off;
- (iii) differential ground settlement;
- (iv) soil contaminated by waste or by leachate or gases generated by decomposition of waste;
- (v) the presence, migration or collection of waste generated gases;
- (vi) the possible presence of hazardous waste;
- (vii) potential exposure to the waste due to the inadequacy or poor integrity of the cover; and
- (viii) attraction of animals and insects.

(b) Additional Considerations

Additional disadvantages and/or nuisance effects for consideration include:

- (i) high costs for remedial and mitigative measures to ensure public safety with buildings or structures;
- (ii) growth of plant material often poor and erratic due to thin/compacted soil cover restricting root growth and low level of soil moisture and nutrients;
- (iii) extensive irrigation (costly) normally required for vegetation;
- (iv) generally uneven/unstable surface from uneven fill settlement;
- (v) necessity to provide piped services;
- (vi) possible damage to underground systems and service lines due to settlement and leachate-related corrosion;
- (vii) dust from cover material and erosion; and
- (viii) odours from waste and where applicable, vented gases.

1.2.2 Suitable Land Use

The Ministry normally discourages residential and other sensitive development on lands previously used for waste disposal purposes, (see the definition for Sensitive Land Use in Section 2 of this guideline) because of the high risks associated with gas and leachate and the inherent problems associated with monitoring and maintenance of control systems on a continuous basis. Additional information concerning development on or near waste disposal sites may be obtained from the Ministry's Guideline D-4 "Land Use on or Near Landfills and Dumps". Sensitive land use may be acceptable, subject to concurrence from the Ministry.

Unless substantial clean-up efforts completely remove all waste and there is no residual contamination, or it can be demonstrated to the Ministry's satisfaction that the wastes will not pose a potential adverse effect for the proposed use, the Ministry recommends that uses on lands previously used for waste disposal be limited to open-air activities associated with parks, recreation and open space, crop farming, and similar uses for which the landfill end use is specifically designed. The end use may have been specified in the conditions on a Certificate of Approval issued for the site- if a Certificate had been issued. Where Certificates of Approval (C of A) exist for dumps and landfill sites, end uses may have been set out in the closure plans required under the Certificate of Approval when the landfills and dumps were being established. Details concerning the end uses, where specified, are managed through requirements in the C of A. There are, however, many sites which do not have Certificates, and therefore there is no end use plan. For those sites where a Certificate of Approval does not exist, a considerably greater amount of site assessment may be necessary in support of a section 46 approval.

Livestock grazing is discouraged, as it could affect the vegetative cover on the landfill site or dump site, resulting in erosion, potential exposure of waste, and increased leachate production. As well, if litter and other wastes become exposed, their ingestion could pose a hazard for livestock.

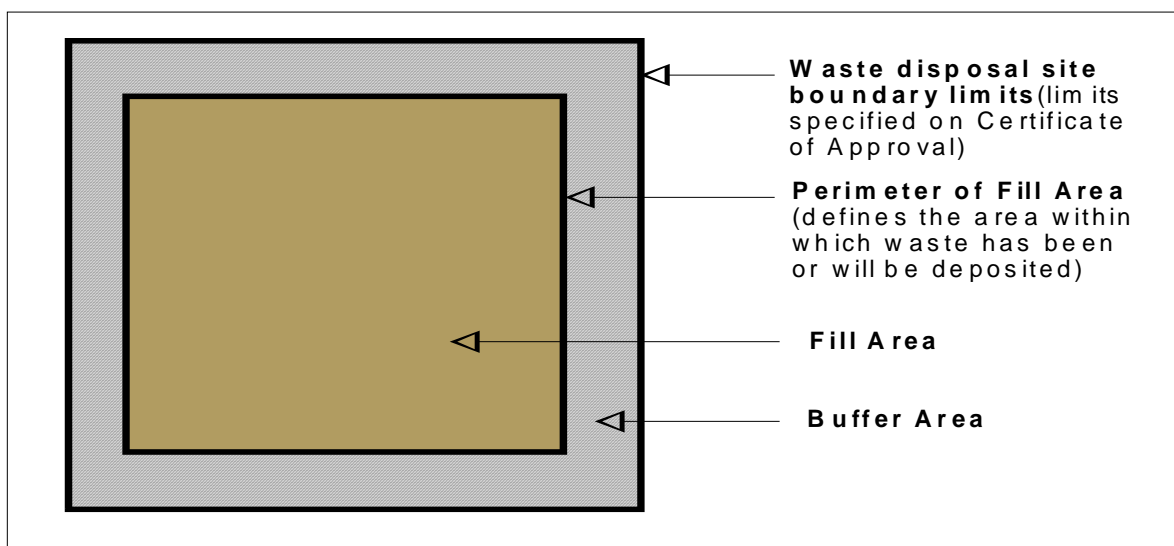
There should generally be no paved or impermeable surfaces or underground services or structures on lands previously used for waste disposal purposes. Depending upon the degree of risk, however, certain engineered options may be acceptable.

2.0 APPLICATION OF SECTION 46

2.1 DEFINITIONS

For information on waste, dumps and landfill sites, reference should be made to Ontario Regulation 347 (General- Waste Management) and Ontario Regulation 232/98 (Landfilling Sites). Land use planning terminology, in addition to the terms defined here, may be found in the Ministry of the Environment's Land Use Planning Guidelines, D-1 "Land Use Compatibility: Definitions".

Landfill Or Dump (plan view)



Change in Land Use/Activity is any use, activity, building, structure, service facility or utility, including roads, either at, above or below grade, which is unrelated to the previous certified or uncertified waste management use. A change in land use proposed by means of a planning process (e.g., Official Plan Amendment, Zoning By-law Amendment, etc.) is also defined as a "use". The maintenance of a non-operating site (e.g., shrub planting or grass cutting), the installation of a fence or a change in surface grading through the use of cover material does not constitute a change in land use/activity. However, surface grading, contour changes, fence installation and similar activities may require an amendment to an existing Certificate of Approval for a landfill or waste disposal site. A section 46 Approval is needed each time there is a change in land use/activity.

Contaminant Attenuation Zone is a three-dimensional zone that (a) is located on land adjacent to the landfilling site, (b) is in the subsurface or extends into the subsurface, and (c) is used or is intended to be used for the attenuation of contaminants from the landfilling site to levels that will not have an unacceptable impact beyond the boundary of the zone. A Contaminant Attenuation Zone or Leachate Buffer Area or Gas Buffer may be included in a Certificate of Approval, if one had been issued for the site.

Dump is a waste disposal site where waste is deposited without cover material being applied on regular intervals.

Fill Area is the portion of a property which contains waste, as a result of landfilling or dumping.

Gas Buffer Area is the land adjacent to the Fill Area which is required to protect the public and the environment, where gas that has been generated in the landfill or dump is naturally attenuated or controlled with engineered facilities.

Landfilling means the disposal of waste by deposit, under controlled conditions, on land or on land covered by water, and includes compaction of the waste into a cell and covering the waste with cover materials at regular intervals if impacted by the Fill Area.

Land Used for Waste Disposal is the land comprising the Fill Area where landfilling or dumping has occurred, and may include the buffer area or areas outside of the Fill Area.

Leachate Buffer Area is the land adjacent to the Fill Area which is required to protect the public and the environment, where water-borne contaminants originating in the waste are naturally attenuated or controlled with engineered facilities.

Sensitive Land Use means land uses sensitive to dump and landfill site characteristics, among which are subsidence, gas generation and leachate generation.

2.2 Lands Used for Waste Disposal (Certified and Non-Certified)

Section 46 approval is required for the proposed use of lands used for waste disposal, with some exceptions. Section 46 applies to both certified and uncertified sites.

2.3 Exceptions

Section 46 normally does not apply to the following situations (however, these situations may be subject to other statutory powers and requirements such as Orders and Certificates of Approval):

- (a) the Peripheral Area within a waste disposal site's boundary beyond those lands actually used for waste disposal purposes, unless it can be proven that leachate from the site has contaminated adjoining lands. Adjoining lands contaminated by leachate would be viewed as lands used for disposal of waste, as the leachate is a waste;
- (b) lands for which a Certificate of Approval (C of A) for waste disposal has been issued, but which have not been, and will not be used for landfilling;

- (c) lands for which a Certificate of Approval for waste disposal has been issued, and which are still being used for waste management purposes for an operating landfill (changes to the waste site operation are handled via amendments to the conditions on the Certificate);
- (d) lands last used for disposal of waste more than 25 years ago;
- (e) waste sites exempted from Part V of the EPA under Ontario Regulation 347, R.R.O. 1990, section 5(1) (*e.g.*, derelict motor vehicle sites, unless other subject waste, such as vehicle parts or municipal waste has been buried on the site or materials have been burned/incinerated and left on the site);
- (f) lands used for disposal of wastes exempted from Part V of the EPA under Regulation 347, section 3(1) such as agricultural wastes, condemned animals, dead animals, inert fill, rock fill or mill tailings from a mine, *etc.* (The planning approval authority should still address settlement and other concerns where there is an application for a change in land use on a site containing exempted wastes.);
- (g) lands on which solid wastes have been recycled and/or reused for engineered/structural purposes (*e.g.*, inter-ministry agreement for the reuse of asphalt in provincial roadways, or boards, paper, felled tree stumps and branches, *etc.*, used as or within construction material) in accordance with Regulation 347. The reused materials are no longer considered to be waste. Therefore, their presence alone on a site, in a Ministry endorsed recycled/re-used form, does not constitute a waste site and this guideline would not be applicable;
- (h) organic soil conditioning sites (sewage biosolids or processed organic waste [POW] from sewage treatment plants, hauled sewage), approvals for which are attached as Schedules to waste management system Certificates of Approval, since the waste is deposited for the purpose of improving the characteristics of the soil for agricultural purposes rather than for final disposal. Note that Regulation 347 defines “organic soil conditioning” as the “incorporation of processed organic waste in the soil to improve its characteristics for crop or ground cover growth”. Therefore, section 46 approval does not apply to lands on which these wastes were utilised;
- (i) sites containing naturally occurring organic material (*i.e.*, not deposited by humans);
- (j) a new water or sewage project approved under the OWRA, or a new use of an approved water/sewage works, even if it is on or passes through lands that have been used for disposal of waste. However, the same technical concerns identified in Section 3 of this guidance document would need to be addressed through the OWRA approval;
- (k) where waste is put on or in the ground but approved under a sewage works approval;
- (l) generally, lands owned or purchased by Her Majesty the Queen in Right of Canada or an agent of the federal government (such as Atomic Energy of Canada Limited) [**check with MOE staff**]; and
- (m) generally, lands which are under federal jurisdiction [**check with MOE staff**].

2.4 Excavation of Wastes

Waste may be excavated as part of the site use proposal and section 46 approval application. However, even if the waste is removed, a section 46 approval is still required for the proposed land use/activity. If waste is to be excavated, the following work will need to be done:

- (e) identify the location of all waste cells on the site;
- (f) obtain an EPA Part V Certificate of Approval for waste processing if waste is to be excavated and separated from the soil for disposal elsewhere, leaving the soil on the site;

- (g) obtain an EPA section 9 Certificate of Approval (Air) if necessary;
- (h) supervise the removal of the waste using a licensed hauler and arrange for its disposal at a waste management facility approved to receive the waste;
- (i) analyse the soil quality to ensure it is suitable for the proposed use of the site;
- (j) produce a report, to the satisfaction of the local Ministry District Office and the Environmental Assessment and Approvals Branch (EAAB), that no waste related problems will occur; and
- (k) verify in writing, to the satisfaction of the local Ministry District Office and the EAAB, that all clean-up and removal activities have been completed.

3.0 GENERAL REQUIREMENTS FOR AN EPA SECTION 46 APPROVAL

The following general requirements will normally apply for a section 46 Approval.

3.1 Indemnification

The owner or applicant must indemnify the Ministry with respect to damages which may result from construction, use or operation of any use approved under section 46 through an Indemnification Agreement. EAAB staff can provide guidance on preparation of Indemnification Agreements. Appendix A contains an example of an Indemnification Agreement acceptable to the Ministry.

Indemnification Agreements are signed by the Applicant(s) for a section 46 Approval. The final document will require approval by Ministry of Environment legal staff before it is accepted as part of the Approval. This document must be included as part of the Approval package, as it saves harmless the Minister, Ministry staff, and the Province from any impacts arising from the Approval. It should be noted that it is in a former property owner's best interest to have a new Indemnification Agreement in place if there is a change in ownership of the lands on which the waste disposal site is located.

3.2 Technical

- (a) The limits of lands previously used for waste disposal purposes must be identified on a survey or a Registered Plan. When information is lacking (*e.g.*, old, uncertified and uncertain sites), site specific studies will be required to define the limits of lands previously used for waste disposal purposes;
- (b) The potential hazards must be quantified for the proposed land use;
- (c) Appropriate design techniques must be approved by the municipality (or its equivalent) to ensure that proposed buildings, structures and systems are acceptable for the identified hazards; and
- (d) When monitoring is proposed to mitigate on-site conditions, the monitoring program must be acceptable to the Ministry and be included as part of a Certificate of Approval (C of A) issued by the Ministry.

All work must be undertaken and completed to the satisfaction of the Ministry of the Environment staff before the application for section 46 approval is submitted to the Minister for consideration.

3.3 Environmental Bill of Rights (EBR)

An EPA section 46 Approval is a "Class I Prescribed Instrument" under Ontario Regulation 681/94, which means that it is subject to the public participation requirements under Part II of the *Environmental Bill of Rights* (EBR). "The Requirements of the EBR for Prescribed Instruments Guide for Applicants" (November 1994) provides direction for the information which must accompany the section 46 application for EBR purposes.

Upon receipt of a request for a section 46 approval, the proponent will be advised by EAAB staff that an EBR abstract must be prepared and provided for placement on the EBR Registry. Upon receipt of an acceptable abstract, EAAB staff will place it on the EBR Registry for a minimum of 30 days, to permit review and submission of comments by the public.

The 'Abstract' should be no more than 100 words, and should include:

- (a) a description of the previous and proposed use of the site; and
- (b) the location of the site (*e.g.*, northwest corner of Clark Street and Oak Avenue, City of Toronto, Lot and Concession Numbers, etc.).

The decision on the section 46 approval, once rendered by the Minister, will also be put on the Environmental Registry. It should be noted that the Minister's decision cannot be appealed to the Environmental Review Tribunal (ERT), but may be subject to appeal under section 38 of the *Environmental Bill of Rights*.

3.4 Agreements

Agreements may be developed and executed between the site owner and the municipality or other planning approval authority to assure responsibility for the construction, ownership, maintenance and operation of any works required to monitor and control the hazards, as part of the process of obtaining a section 46 Approval. The Minister/Ministry is not involved in the signing of such agreements. It should be noted that these technical/administrative agreements are different from the Indemnification Agreement discussed in Section 3.1 that the proponent signs.

3.5 Registration

Following issuance of a section 46 approval, a Certificate of Requirement (EPA, s.197) must be registered on title to the lands to advise anyone with an interest in the lands of the existence of the section 46 approval. This document is prepared by MOE Legal Services staff. Decisions on whether particular MOE instruments (*e.g.*, orders, approvals) should be registered on title to the lands will be determined on a case-by-case basis by the Ministry's Legal Services Branch.

3.6 Summary of Responsibilities

TABLE 1: GENERAL AREAS OF RESPONSIBILITY

	ACTIVITY	MINISTRY	PLANNING APPROVAL AUTHORITY	PROPONENT
1.	LAND USE SITE INVESTIGATION			X
2.	PROVIDE EVIDENCE OF NO PROBLEM OR PROPOSE REMEDIAL MEASURES			X
3.	COMMENTS ON PROPOSALS, EVALUATIONS, STUDIES, ETC. & NEED FOR REMEDIAL MEASURES	*X	X	
4.	ENSURE THAT REQUIREMENTS/REMEDIAL MEASURES ARE IMPLEMENTED	X	X	X
5.	APPROVE & INSPECT CONTROLS & REMEDIAL MEASURES		X	
6.	ASSESS MONITORING PROGRAM RE. CONFORMANCE WITH PROVINCIAL REQUIREMENTS FOR PUBLIC PROTECTION		*X	
7.	ISSUANCE AND ENFORCEMENT OF APPROVALS UNDER EPA & OWRA, IF NECESSARY	X		
8.	ENSURE LONG TERM MONITORING, MAINTENANCE & INSPECTIONS FOR CONTROLS & OFF-SITE MIGRATION	X	X	X
9.	MAINTAIN MONITORING REPORTS & ENSURE FURTHER REMEDIATION IF NECESSARY, OR DECOMMISSION MONITORING/CONTROLS		X	X

When land use is proposed near Lands Used for Waste Disposal Purposes, the Ministry is not normally involved, (*i.e.* staff will neither review nor comment on a proposal). Proponents should refer to the Ministry's Guideline D-4 "L "Land Use On or Near Landfills and Dumps" Staff will, however, carry out any required technical duties under the EPA and OWRA. Conditions at the waste disposal site must be in compliance with the *Environmental Protection Act* and Ontario Regulation 347. The Ministry can enforce compliance where there is evidence of a contravention.

4.0 PROPONENTS' RESPONSIBILITIES

4.1 Contact the Ministry of the Environment

Proponents of development of lands previously used for waste disposal should contact the nearest MOE District Office for guidance and advice as to whether an approval under section 46 is required. If, following discussion with MOE staff, it is determined that section 46 applies, the proponent is legally obliged to apply to the Minister for an approval. **The proponent will need to identify clearly and specifically the desired use, as the approval when given will be for that use alone.** The proponent or applicant, prior to applying to the Minister, must determine from the planning approval authority whether the proposal conforms to local planning documents, the Provincial Policy Statement or if an approval is needed under the Planning Act. This information will be needed as part of the information provided in support of the section 46 approval application.

Following discussion with District Office staff, the proponent should contact the Ministry's Environmental Assessment and Approvals Branch (EAAB) to initiate the process to obtain the Minister's approval.

4.2 Supporting Studies and Documentation

When applying for an approval under section 46, the proponent will need to have studies prepared by a qualified consultant (or consultants, depending on the technical characteristics of the site) in support of the application. The consultant must be a competent professional/practitioner (*e.g.*, Professional Engineer), and must verify the feasibility, completeness and accuracy of the information provided. Verification of completeness and accuracy would be indicated via stamping or otherwise approving (*i.e.*, signing off) the studies. The studies should:

- (a) provide basic background information as described in Section 6.0, "Required Supporting Information";
- (b) identify the limits of lands previously used for waste disposal and the type(s) of waste deposited;
- (c) identify and quantify potential hazards for the proposed use by documenting existing characteristics of the waste disposal site and their significance;
- (d) address any environmental concerns by identifying on-site remedial actions necessary, including construction details and specifications to deal with the characteristics referred to in (c), above;
- (e) identify any existing or potential off-site adverse effects, and ensure that the proposal will not create new or additional adverse off-site impacts;

NOTE: A recommendation for a Section 46 Approval will not be made by MOE staff until off-site adverse effects have been addressed to their satisfaction.

- (f) ensure that the design of proposed buildings, structures, services, control facilities, and amenity areas is appropriate, and that the various features or components of the use will not be adversely affected by the site;
- (g) indicate anticipated results of proposed measures, including the rationale or basis for the conclusions; and
- (h) develop and implement monitoring and contingency plans, as necessary.

4.3 Verification of Conditions Associated With Approval

Section 46 approvals differ from other EPA Part V approvals granted by the Ministry in that they do not contain conditions. If other EPA approvals are required in support of the section 46 approval, they will contain conditions designed to mitigate whatever on-site concerns have been identified as requiring mitigation. The existence of these approvals may be referenced in the recitals in the section 46 approval.

5.0 MINISTRY OF ENVIRONMENT INVOLVEMENT

5.1 Application of EPA section 46

When contacted by a planning approval authority or a proponent with a potential application under EPA section 46, EAAB or MOE District Office staff will:

- (a) confirm if or where section 46 approval is required, based on information made available either through Ministry records, municipal records and/or a study commissioned by the proponent;
- (b) provide direction on the requirements and procedures for obtaining a section 46 approval; and
- (c) determine the feasibility of a proposal at the earliest opportunity.

5.2 Section 46 Technical Review

5.2.1 Consultants' Studies

The EAAB, with input from appropriate Regional and District staff (and possibly other MOE staff), will review the applicant's consultant's studies for general adequacy/completeness to meet the Ministry's requirements, but will rely on the consultant's professional competence on specific details of technical design for the proposed use. EAAB staff will ensure that the consultant has addressed gases, leachate and settlement (subsidence) concerns in particular.

5.2.2 Gas and Leachate Controls/Buffer Area

If controls are needed for gas and leachate, access must be provided and maintained for installation, inspection and maintenance purposes. If buffer areas are required, Ministry Guideline D-4, "Land Use On or Near Landfills and Dumps" and Ontario Regulation 232/98 (Landfilling Sites) can provide direction. It should be noted that Guideline D-4 does not apply to the section 46 approval. If controls are required as a result of the section 46 approval review and in support of the section 46 approval, details about buffers and any other like matters will be addressed in the issuance of Cs of A.

5.2.3 Monitoring and Inspections

If gas and/or leachate control equipment and associated MOE approvals are required, Ministry staff will expect monitoring of site conditions, maintenance of monitoring and control devices, and inspections of equipment and systems to ensure that the equipment functions properly, and that there will be no adverse effects. This work will be specified in Cs of A issued for the control equipment. The onus is on the holder of the C of A to ensure compliance with terms and conditions on the C of A.

5.3 Records

The EAAB and each District Office will keep the Record of section 46 approvals within their boundaries as required by law pursuant to Section 19 (2) of the *Environmental Protection Act*. A Record of denied approvals and the rationale for their denials should also be maintained at the EAAB and in the District Offices.

5.4 Ontario Water Resources Act (OWRA) Exemptions

Although OWRA approved water and sewer projects are exempt from EPA section 46, under EPA section 26, the Ministry will neither endorse nor support the construction of such facilities (e.g., trenches, sewer lines, etc.) on landfills and dumps, which could allow the migration of explosive or other gases to places where they could pose a hazard. When pipes are laid in trenches dug through landfills, the pipe-laying must be undertaken such that the pipes will not generate off-site adverse effects. This consideration should be included as a condition on the OWRA approval issued for the pipeline. Construction of a new or replacement pipeline for water or sewage by a municipality would fall under Class EA review, and any concerns with regard to a landfill site in the right-of-way should properly be revealed and addressed at that point in time.

5.5 Section 46 Administrative Procedures

Ministry staff follow a set of administrative procedures in processing section 46 approval applications. EAAB staff should be contacted for information on the administrative procedures, as the procedures change from time to time.

6.0 REQUIRED SUPPORTING INFORMATION

The applicant must provide evidence, through the consultant's studies, that the proposed use (i) will not result in adverse effects on-site and off-site, (ii) will be in conformity with the municipality's Official Plan and Zoning By-law requirements (confirmation to be provided by the planning approval authority), and (iii) will not pose a risk to health or safety with respect to the factors identified in Section 1.2, "Site Re-Use Considerations", by assembling the following information.

6.1 General

In all cases, the consultant's studies must provide Ministry EAAB staff with the following general information. Application review time and subsequent issuance of the section 46 approval are dependant on the completeness of the information submitted in support of the application.

- (a) the purpose and description of the proposal;
- (b) the name of the proponent - the applicant need not be the site owner;
- (c) the location of the site and the address(es) of the applicants and land owner(s) (if different from applicant);
- (d) the present owner(s) of the site and written confirmation that the owner(s) is/are in agreement with the proposal;
- (e) the dates during which waste was deposited;

- (f) the official plan, area plan or management plan designation and the zoning for the site, and whether the proposal conforms to the plan and is in compliance with the zoning;
- (g) the present and anticipated use and zoning of abutting lands;
- (h) identification of planning and other approvals and permits required from agencies, (e.g., municipal building permit, MNR work permit under the *Public Lands Act*);
- (i) written endorsement of the proposal by the planning approval authority;
- (j) any persons who may have an interest relating to the proposal;
- (k) a legal description of the land for which the section 46 approval is being sought;
- (l) an abstract for placement on the *Environmental Bill of Rights* Registry; and
- (m) evidence of notification of persons who may have an interest in the section 46 Approval.

6.2 Technical

The Ministry will normally require a consultant's study containing detailed site information, including an engineering and hydrogeologic study. The consultant's report must be prepared by a qualified professional/practitioner who is prepared to assume liability for the contents of the study and its recommendations.

When a detailed consultant's study is required, the background and current information on the site must include the items listed below. All items must be considered, but the level of detail can vary on a site-specific basis, according to the extent of data needed to protect present and potential users/uses of the site, and the properties in proximity to the site.

Pre-application consultation with Ministry staff in the local District Office is recommended when there is doubt as to the sufficiency or adequacy of information available.

The technical information requirements are:

- (a) a history of the usage of the site prior to disposal of waste on it;
- (b) the hydrogeology of the site;
- (c) identification of the contaminants and a delineation of the zone in the subsurface that has, will be or may have been contaminated by leachate produced in the landfill or dump;
- (d) specific details on the type of waste deposited (e.g., municipal, industrial, liquid, solid, etc.);
- (e) a delineation of the zone in the subsurface that has, will be or may have been subject to impact from gases produced in the landfill or dump;
- (f) identification of whether off-site migration has occurred, or will be caused by the proposed use;
- (g) an assessment of the need for any leachate or gas control facilities or monitoring systems;
- (h) a determination of the area, depth and volume of fill and an indication of whether the figures are calculated from complete/accurate information or estimates;
- (i) a scaled site plan and survey or Registered Plan which defines the limits of the Fill Area, the Gas Buffer Area and Leachate Buffer Area (if these are present) and the location of any existing or proposed buildings, structures, services, facilities and activities, both above and below the ground, and the location of any existing or proposed paved or impermeable surfaces;
- (j) the identification of any existing control devices and proposals for their decommissioning;
- (k) other required Ministry approvals (e.g., EPA section 9 approval for air emissions, other EPA Part V approvals, OWRA approvals, a Ministry Permit to Take Water, etc.);

- (l) required agreements (*e.g.*, monitoring agreement, lease, *etc.*) and parties involved;
- (m) expected water source for the proposal, if applicable (*e.g.*, municipal system, drilled or dug wells, *etc.*) and facilities for management of sewage generated at the site;
- (n) information on the present and potential uses of ground and surface water resources in the vicinity of the site that could be affected by the proposed use (*e.g.*, proximity of wells, results of well testing, history of well water complaints);
- (o) location of closest subsurface public utilities including storm sewers, sanitary sewers, water mains, telephone conduits, *etc.* along which gases could travel, or corrosion of these utilities could occur;
- (p) the possible adverse effects from the proposed use on adjacent lands as set out in Guideline D-1, "Land Use Compatibility";
- (q) recommendations for design features and mitigation measures; and
- (r) any other site-specific technical characteristics or matters relevant to the proposed use.

6.3 Exceptions for Detailed Studies

Detailed site information and hydrogeologic and engineering studies as set out in Section 6.2 above may not be required to meet the Ministry's objective, as noted in Section 1.1, when:

- (a) there are no proposed buildings and/or structures on lands previously used for waste disposal purposes;
- (b) there are no proposed impermeable or paved areas on lands previously used for waste disposal purposes that would cause or increase lateral gas migration;
- (c) it is assured that there would be no adverse effect from possible exposure of waste on the proposed use;
- (d) the waste has been removed from the site and the soils are suitable for the proposed use;
- (e) the quantity and/or type of waste and associated health and safety risks are deemed insignificant by Ministry staff;
- (f) any combination of the above.

A statement by a professional/practitioner which substantiates why more detailed information is unnecessary, along with the information identified in Section 6.1 of this document, "General Information", will still be required.

7.0 PUBLIC SAFETY

Applicants for section 46 Approvals should recognise that public safety is a key component in the section 46 Approval. Applicants should take into consideration the public safety interests and obligations of other organisations and their legislative requirements. The following sections identify some of the organisations and their respective legislation which may come into play during the section 46 Approval process.

7.1 General

The Province sets out legislative requirements, policies and guidelines to protect public health and safety for land use/development (*e.g.*, the Ministry of the Environment under the EPA and the OWRA, the Ministry of Municipal Affairs and Housing (MMAH) under the *Planning Act* and the *Condominium Act*, the Ministry of Consumer and Business Services (MCBS) under the *Condominium Act*, the Ministry of Labour under the *Occupational Health and Safety Act*). It should be noted that where there appears to be any conflict between provisions of the EPA and other legislation or regulations related to environmental concerns, the provisions of the EPA and its regulations prevail (s. 179.1, EPA, RSO 1990).

7.2 Ministry of the Environment

The Minister of the Environment approves the use of the land under section 46 of the *Environmental Protection Act*, while proponents and their consultants are responsible for ensuring public safety through the site assessment, the design and construction details of buildings and structures, and the design and construction of contaminant control facilities. In its consideration of applications for section 46 approvals, the MOE relies on the work undertaken by professionals in support of the application. The Ministry of the Environment is responsible for the approval of any necessary control facilities, related to the section 46 approval, which fall within the requirements of the Ministry's mandated legislation (for the purposes of section 46 approvals, the EPA, OWRA, and EAA).

MOE staff, as well as planning approval authorities, should make efforts to advise persons proposing land use on lands previously used for waste disposal of potential hazards and possible high costs involved in the resolution of problems that could arise when developing such lands.

7.3 Planning Approval Authority

The planning approval authority is ultimately responsible for land use and related health and safety within its jurisdiction. On lands where land use is normally subject to municipal Official Plans and Zoning By-laws approved under the *Planning Act*, responsibility rests with municipalities having delegated authority for certain *Planning Act* approvals, or in Northern Ontario, with the Minister of Municipal Affairs and Housing or a delegated planning board. In portions of the Province where the *Planning Act* does not apply (*e.g.*, Crown Land) the resource management body responsible for the management of such land is responsible for ensuring public health and safety. For example, the Ministry of Natural Resources (MNR), which is the planning approval authority for Crown Land, issues land use permits under various Acts. The planning approval authority must endorse the land use proposal and must approve all design and construction details associated with the project. For lands under federal jurisdiction, (*e.g.*, National Parks) the Federal government is responsible for local health and safety.

7.4 MNR Waste Sites on Crown Land

MNR has policies regarding areas on Crown Land that were formerly used as waste disposal sites. MNR should meet the intent of this guidance document when considering the issuance of land use permits for these sites, when EPA section 46 approval does not apply.

8.0 PLANNING APPROVAL AUTHORITY

As stated earlier, the Federal government, Minister of Municipal Affairs and Housing, municipality, planning board or on Crown Land, the Ministry of Natural Resources is primarily responsible for overall public health and safety relating to land uses within its jurisdiction. More specific responsibilities are detailed in the following sections.

8.1 Site Specific Plan Review

Ministry of the Environment plan review staff are not involved in the site specific review of most land use applications under the *Planning Act*. However, applications under the *Planning Act* which involve lands in which waste has been disposed will require review by Ministry plan review staff, as they remain involved in review of planning proposals which have significant environmental concerns (e.g., development on former waste sites, contaminated sites). Accordingly, the onus is on the planning approval authority to advise MOE plan review staff in the appropriate Regional Office that section 46 may apply, as soon as a potential situation is recognized during their review of land use proposals (e.g., official plans and amendments, zoning by-laws, plans of subdivision, consents, plans of condominium, etc.).

8.2 Site Re-Use

The problems of site re-use are a part of the municipal planning responsibilities under Section 2 of the *Planning Act, RSO 1990 c.P.13 (consolidated to July 1999)* which among other matters, requires regard for "the protection of public health and safety". There are many instances in which a Certificate of Approval was not issued (e.g., illegal disposal sites). In addition, older Cs of A may not contain provisions for closure plans. It must be noted that if specific end-use provisions (e.g., a golf course) are included in the C of A, a section 46 Approval for the specified end use will in most circumstances not be required. Section 46 approval will be required for any subsequent uses of the site, not specified in the site C of A, following its closure as a landfill site.

Municipal Official Plans adopted and approved under section 17 of the *Planning Act* can contain provisions to reduce land use conflicts which may arise from development proposals for lands previously used for waste disposal. An Official Plan (O.P.) is a formal document which describes the planning and development policies of a municipality (or in certain instances several municipalities) in a map and text form. The O.P. may describe a number of matters of environmental concern. The intent of O.P. policies is implemented at subsequent planning stages, such as zoning by-laws, plans of subdivision/condo-minimum, consents and other applications and processes available under the *Planning Act*.

A zoning by-law (*i.e.*, a comprehensive zoning by-law) is a municipal by-law under section 34 of the *Planning Act* which restricts the use of land, or the manner in which buildings and structures are developed on a property. The by-law implements the intent of the O.P. on a property-specific basis. An existing zoning by-law covering the lands occupied by the waste disposal site itself could include considerations for the proposed end uses once the site ceases to operate.

Municipalities and other planning approval authorities should include general statements in Official Plans, resource management plans and other similar types of plans, such as:

"Lands which have been used for waste disposal purposes shall be controlled by a zoning by-law enacted to restrict their use to open air activities, and to prohibit structures and impermeable surfaces. Any use sought for these lands will require municipal endorsement. If filling has occurred within the past 25 years, approval will be required from the Ministry of the Environment under section 46 of the Environmental Protection Act."

By requiring zoning by-law changes when re-use of lands previously used for waste disposal is proposed, proponents of development are advised early in the planning process that a specific approval will be required from MOE before the development can proceed. These zoning changes would then have to comply with stated Official Plan policies.

In addition, restraints on the use of lands on a waste disposal site or within its influence area, before or even after 25 years of closure, should be recognized. For example, a new underground hydro conduit or gas pipeline to the landfill site to service the proposed use may jeopardize adjacent development by enabling methane gas, generated by the landfill site, to follow the "conduit" formed by pipeline and its surrounding granular material. Therefore, planning approval authorities should recognize that potential and proposed land uses on lands previously used for waste disposal purposes need to be controlled and reviewed on a case-by-case basis. Lands previously used for waste disposal purposes may be subject to site plan control by-laws under Section 41 of the *Planning Act*, RSO 1990. Accordingly, site plan agreements may be required on the properties, including cautions to be taken where necessary when there is a change in land use/activity.

MOE's Guideline D-4, "Land Use On or Near Landfills and Dumps" provides direction for plan review within 30 metres of a fill area, within 500 meters of a fill area and beyond 500 metres of a fill area. Guideline D-4 is meant for use in establishing appropriate setbacks for development, proposed under the *Planning Act*, which would encroach on landfill sites and dumps. While Guideline D-4 can provide some insights into concerns associated with landfill sites, it should be noted that it does not apply to section 46 approvals.

8.3 Identifying Landfill and Dump Sites

Local planning approval authorities have an initial responsibility to identify landfill sites and dumps (waste disposal sites), where known (operating and non-operating, and certified and uncertified), in their planning documents such as Official Plans, area plans and resource management plans, and/or through a registry system.

Official Plan policies should address waste sites as interim, but primary site use, as eventually, the sites will be closed and other uses may be proposed for them. Municipalities and other planning approval

authorities should use a 'flagging' device to indicate on the Schedules to the O.P. the presence of a waste disposal site and/or lands used for waste disposal purposes. The policy statements about these lands should include recognition that warnings of their presence and potential adverse effects should be maintained in perpetuity (*e.g.*, through use of a symbol on plans, through a coded registry system, *etc.*), regardless of the proposed or existing end use.

8.4 Endorsement of Proposed Use

The proponent needs to ensure that the planning approval authority has advised the EAAB and the local MOE District Office in writing that there is local approval authority concurrence, specifically with the proponent's proposed use, and with the section 46 proposal in general.

8.5 Land Use Planning Approvals/Permits

Planning approval authorities should be prepared to issue development approvals and related permits which implement any provisions which have resulted from the supporting technical studies, upon which the section 46 approval has been based. For example, changes may be needed to zoning and Official Plan provisions. More importantly, if specific building design instructions had been developed as part of the supporting documentation for the section 46 approval, then the planning approval authority would need to ensure that those provisions are properly implemented through development agreements with the proponent, building permits and any other like instruments within the municipality's realm of responsibility to protect against subsidence or gas impacts or any other landfill site-related adverse effects.

The planning approval authority, in review of development proposals which include section 46 approvals, may require the inclusion of provisions in development agreements issued under the *Planning Act*, between the proponent and the municipality (planning approval authority), which will bind the proponent and the municipality to undertake and complete whatever work is necessary to ensure that the use granted under section 46 of the EPA by the Minister of the Environment is properly implemented and constructed.

8.6 Waste Disposal More Than 25 Years Ago

If landfilling or waste disposal had last occurred at a site more than 25 years ago, a section 46 approval would not be required. However, the planning approval authority should still identify concerns and develop provisions as indicated in this document to ensure that all controls necessary to the safe use of the site are incorporated into the site's design, development and use.

Controls on impacts from waste disposal sites, at which waste had been last deposited beyond the 25 year period set out in section 46, may be imposed by the Ministry through conditions on Certificates of Approval, or by Orders. These controls would result from the request (or the requirement for) from the developer for Cs of A which would mitigate existing adverse effects from the site on the proposed use of the site.

8.7 Municipal Tools for Public Safety

The following identifies some statutory authorities which enable municipalities to maintain safety standards for land use on lands previously used for the disposal of waste (e.g., if methane is a concern). Note that this Section provides some examples only: the list is not intended to be exhaustive.

Proponents of development on lands previously used for disposal of waste should become familiar with local municipal standards and by-laws generated under the *Municipal Act*. Proponents should also be familiar with the requirements of the *Building Code Act* and the Ontario Building Code (regulation under the *Building Code Act*).

8.7.1 Ontario Building Code (Regulation under the Building Code Act)

Although the Code does not deal directly with building on waste disposal sites, there are provisions for a municipality to control methane and other hazardous gas accumulations or potential accumulations within buildings. These provisions relate to foundations, and although “air contaminants” is undefined, the Code provides that “Air contaminants (e.g., methane gas or odours from landfill gases) released within buildings, shall be removed insofar as possible at their points of origin and shall not be permitted to accumulate in unsafe concentrations.”

8.7.2 Planning Act

The *Planning Act* consists of objectives and policies designed primarily to provide guidance for the physical development of a municipality. In dealing with waste disposal sites and development, there are various applicable sections.

Subsection 51 (24) RSO, 1990 Ch. P 13 of the *Planning Act* requires that in consideration of draft plans of subdivision (and land division by consent) by the approving authority, regard is to be had for the health, safety, convenience and welfare of the present and future inhabitants. Municipal responsibilities pertain to use, development or redevelopment of lands and buildings.

Section 2 of the *Planning Act* states that the Minister, the council of a municipality, a local board, a planning board and the Municipal Board will have regard to matters of provincial interest, such as the protection of the natural environment and the protection of public health and safety. For additional information on their responsibilities, reference should be made to the Provincial Policy Statements (MMAH).” In the absence of provincial guidelines and policies, municipalities may make their own interpretations of such things as assessing and mitigating environmental impacts.

Part V of the *Planning Act* sets out the various land use controls and related administration. This part of the Act deals with zoning by-laws which may be passed by a municipality. Section 34(1)3.1 addresses prohibitions for contaminated lands.

8.7.3 Other Possible Sources of Controls

National Building Code of Canada
Plumbing Code of Ontario
Canadian Gas Association
Occupational Health and Safety Standards
Ontario/Federal Fire Codes

9.0 APPROVALS, CONDITIONS, AGREEMENTS AND COMPLIANCE

9.1 Approvals Hierarchy

The Ministry of the Environment will not support issuance of other approvals and permits by this Ministry and other agencies, including municipal planning approvals, until the section 46 approval is given in order to comply with the requirements of the EPA. The exception to this general provision is the necessary issuance of approvals by the Ministry for clean-up activities (e.g., waste processing to remove the waste) that may be undertaken in support of the section 46 approval application.

Accordingly, when an EPA section 46 approval is required, Ministry staff should advise the planning approval authority that there must not be approval in principle or a draft approval granted, conditional or otherwise, until the Minister has issued the section 46 Approval.

Exceptions exist when approvals under the *Environmental Assessment Act* (EAA) or the *Niagara Escarpment Planning and Development Act* (NEPDA) are also required. The EAA stipulates that an EAA approval must precede all other approvals, while the NEPDA requires the issuance of a Development Permit in advance of other approvals. Applicants and proponents should also be familiar with the requirements of the *Oak Ridges Moraine Conservation Act* and the Oak Ridges Moraine Conservation Plan.

9.2 Section 46 Approval-Related Conditions

The legal requirements of a section 46 approval consist of a description of the subject lands, the specific use being approved and the Minister's signature. There is no provision for the inclusion of conditions. Recitals are often included in the approval to make reference to the materials, information, other Ministry approvals, orders, and work upon which the approval is based.

Any conditions pertaining to matters within MOE's legislative mandate that would arise from the review and in support of the section 46 application would be included in other Ministry of Environment instruments (e.g., air approvals, waste approvals, orders), and thereby enforced through means other than the section 46 approval itself.

Where opportunities exist or where it is appropriate, conditions should also be reflected in approvals granted by other agencies (e.g., municipalities, through application of the *"Planning Act*, RSO 1990).

9.3 Approaches for Inclusion and Enforcement of Conditions of Approval

9.3.1 Environmental Protection Act, RSO 1990

If use of lands previously used for disposal of waste occurs without an approval from the Minister, the Ministry can prosecute, as this activity is considered to be an offence (EPA, s. 186(1)). If a section 46 approval has been granted, but the proponent uses the lands for purposes other than those approved under section 46, prosecution can also occur. It is important to note that the only use that can occur is the use which has been specifically approved by the Minister. Any other or additional use would require

a new section 46 approval. The applicant or proponent should therefore be very clear about the proposed use for which the approval is being sought.

In very specific circumstances, an existing section 46 approval may be amended. An example of such a circumstance is the severance of a parcel of land containing the former waste site from a larger parcel of land, which had been granted a section 46 approval where the existing legal survey of the property was used in lieu of a legal survey of the actual fill area. The amendment would then specify the new survey definition of the land on which the waste site is located. The result of the amendment is the “lifting” of the section 46 approval from the severed parcel of land which does not contain the waste site.

Under very specific circumstances, it may be possible to obtain a section 46 approval which is essentially an “open” approval. “Open” approval means that the site is suitable for whatever use is desired, regardless of changes in use over time. This type of section 46 approval could only be obtained if the waste has been entirely removed from the site, and the level of clean-up meets the most stringent requirements of the Ministry’s Site Re-Use Guidelines for the proposed use, or the nature of the waste is such that there would be no adverse effect or risk for the proposed use. The onus would be on the proponent to specifically request unrestricted use in the section 46 approval application, and provide assurance either that the site had been entirely remediated, or that the existing waste would be of no concern to the health and well-being of the users of the site. The section 46 approval would need to clearly state that any use is permitted without subsequent section 46 approvals.

9.3.2 Planning Act, RSO 1990

It should be noted that proposed land use changes by means of Official Plan amendments, zoning by-law amendments, and other processes available under the *Planning Act* are considered as “uses” within the context of EPA section 46, and that the section 46 approval is to precede any other approvals.

Given the foregoing, a planning approval authority should not issue a land use related approval prior to the granting of EPA section 46 approval. Such an action would establish the principle of development, and would therefore be taking the position that the development is acceptable, even though the work required in the section 46 approval application might prove otherwise. As well, a draft approval may permit certain development activities to take place on-site, and it also permits the owner of the lots to enter into sales agreements with prospective purchasers. However, land use acceptability and approval when section 46 applies can only be determined by the Minister of the Environment.

9.3.3 Other Municipal Legislation

Municipalities have powers under other legislation that enable them to inspect properties and ensure that any special provisions required through development agreements are incorporated in the approved development. The legislation also provides for any necessary remedial measures (e.g., *The Building Code Act*, *The Municipal Act*).

9.4 Ministry Certificates of Approval

Additional Ministry approvals may be needed, such as an EPA section 9 approval for vented gases (*i.e.*, air emissions) or an approval under EPA Part V to process the on-site waste.

All applications for Ministry Certificates of Approval are to be sent to the Environmental Assessment and Approvals Branch (EAAB). Pre-submission consultation is available at the local Ministry District Office, and proponents are encouraged to make full use of this service. The actual Certificates of Approval will be issued by the Director of the EAAB on the basis of other Ministry policies and legislation, and their relationship to the review process for the section 46 approval. Application forms and guidance documents are available at the EAAB, and at Ministry Regional and District Offices.

Certificates of Approval issued by the Ministry contain conditions which are the basis for obtaining compliance. The holders of these approvals are responsible for ensuring compliance with the conditions. Ministry staff will monitor for compliance, and will respond to and investigate complaints which may arise from non-compliance.

9.5 Signing Agreements

Agreements are to be signed by other parties prior to a section 46 approval being submitted by MOE staff to the Minister for consideration of approval. Indemnification agreements signed by the applicant are required as part of the approval package submitted to the Minister.

10.0 REGISTRATION ON TITLE

10.1 Requirement for Registration on Title

Under section 19 (1) of the *Environmental Protection Act*, an Approval of the Minister under the EPA is binding upon the successor or assignee of the person to whom it is directed. 'Registration on title' is a mechanism to ensure people are aware of the effect of section 19 (1) of the Act, for any EPA approval which affects the use of land or otherwise affects the title to land.

10.2 Verification of Registration on Title

Where 'registration on title' is required as part of the section 46 approval, and for section 46 approval-related documents, confirmation of the registration is to be sent by the proponent to the Director, EAAB.

10.3 Section 46 Approvals and EPA Section 197

The provisions of section 197 prohibit any person with an interest (*e.g.*, lease, right-of-way, easements, uses, ownership, etc.) in the land from dealing with the land in any way (*e.g.*, a change in ownership) without first giving a copy of the order or decision (*e.g.*, the approval) to each person acquiring an interest in the land as a result of the dealing.

In the majority of section 46 Approvals, it will be necessary for the proponent to provide a registrable description of the land and register a Certificate of Requirement (previously known as Certificate of Prohibition), signed by the EAAB Director. An approval which is drawn up in the proper form can be registered on the title to the land in the Land Registry Office via a Certificate of Requirement as an instrument affecting title. This practice is the normal means for registering section 46 Approvals on title.

The prohibition runs with the land (*i.e.*, it is deemed to be directed to each person who subsequently acquires an interest in the land), unless revoked when an environmental concern no longer exists, by registration of a Certificate of Withdrawal of Requirement issued by the Ministry of the Environment under section 197. It should be noted that a request for withdrawal will need to be supported in most cases by technical documents which show to MOE's satisfaction that there is no longer a need for the prohibition.

The Certificate of Requirement will serve to ensure that subsequent purchasers (or anyone who may acquire interests in the lands) are aware that the former use of the lands was for waste disposal purposes, and where they can obtain further information on the approved use. The recitals in the section 46 approval should include reference to the registration of a Certificate of Requirement as provided for in section 197 of the EPA. An example of such a recital is as follows:

AND WHEREAS pursuant to section 197 of the EPA, any person with an interest in the Lands or any part of them is prohibited from dealing with the Lands in any way without first giving a copy of this decision to each person acquiring an interest in the Lands as a result of the dealing, and any dealing with the Lands contrary to this provision may result in a voidable transaction;

10.4 Site Plan/Survey

The site plan or survey submitted with the application should be prepared in a form which can be registered on title as a Reference Plan, where it is necessary to describe lands for registration purposes, when the existing legal description is not suitable.

10.5 Certified Waste Disposal Sites

A waste disposal site certified prior to 1990 would normally have the C of A registered on title. Details in this regard are contained in "Registration on Title of Certificates of Approval for Waste Disposal Sites" (formerly MOE Policy 14-06). The C of A registration may now be replaced for the same purposes by registering a Certificate of Requirement.

The registration of the C of A or the Certificate of Requirement warns future owners or "interested parties" that the site was used for waste disposal purposes, and makes them aware of the need to consider obtaining an approval under EPA section 46.

11.0 REFERENCE DOCUMENTS

The following documents may be helpful when preparing or reviewing applications under EPA section 46. Proponents/the public may also refer to any Ministry document that has been formally approved. It should be noted that these documents are subject to revision, and are periodically updated. The most current versions are available from the Ministry's Public Information Centre, or on-line at the Ministry's website: www.ene.gov.on.ca.

1. Guideline B-7, "Interpretation of the Reasonable Use Concept into MOEE Groundwater Management Activities" [formerly 15-08] and Procedure B-7-1, "Determination of Contaminant Limits and Attenuation Zones (Revised 1993).

2. Guideline B-9, "Guidelines for the Resolution of Ground Water Quality Interference Problems" (Nov. 12, 1986)[formerly 15-10] and Procedure B-9-1, "Resolution of Ground Water Quality Interference Problems" (Revised 1993).
3. Guideline C-5, "Registration on Title of Certificates of Approval for Waste Disposal Sites" (April 1994). [formerly 14-06]
4. Guideline C-15, "Guideline for Use at Contaminated Sites in Ontario" (Revised February 1997).
5. Guideline D-1, "Land Use Compatibility" (April, 1994).
6. Procedure D-1-3, "Land Use Compatibility: Definitions".
7. Guideline D-4, "Land Use On or Near Landfills & Dumps" (April 1994) [formerly 07-07].
8. Procedure D-4-1, "Guideline for Assessing Methane Hazards from Landfill Sites" (November, 1987).
9. Procedure D-4-2 and D-6-4, Ministry of Consumer and Commercial Relations Bulletin No. 91003, "Environmental Warnings/Restrictions: Registration Against Title".
10. Procedure D-4-3, Ministry of Consumer and Commercial Relations Bulletin No. 80023, "Registration of Certificates and Provisional Certificates"
11. "The Requirements of the Environmental Bill of Rights for Prescribed Instruments - Guide for Applicants" (November, 1994)
12. *Planning Act*, RSO, 1990
13. *Municipal Act*
14. *Building Code Act*
15. Ontario Building Code (Regulation under the *Building Code Act*)
16. Ontario Regulation 347 (Regulation under the *Environmental Protection Act*)

Appendix A: Generic Indemnification Agreement

Schedule “B”

INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT made the ____ day of _____, 200____,

BETWEEN

(herein called "the Owner")

OF THE FIRST PART

and

**HER MAJESTY THE QUEEN, IN RIGHT OF ONTARIO
AS REPRESENTED BY THE MINISTER OF THE ENVIRONMENT**

(herein called the "Crown")

OF THE SECOND PART

WHEREAS _____ is the owner of certain lands (the “Lands”) known municipally as _____ in the _____ (municipality), which is more particularly described in the survey attached as Schedule “A” to the accompanying section 46 Approval;

AND WHEREAS the Lands were used for the disposal of waste;

AND WHEREAS the Owner has applied to the Minister of the Environment for an approval under section 46 of the Environmental Protection Act R.S.O. 1990, c.E.19, as amended, (the “EPA”) to use the Lands as _____;

AND WHEREAS the Crown in approving the use of the Lands has relied on the information provided by the Owner;

AND WHEREAS the consent of the Minister of the Environment pursuant to Section 46 of the EPA shall be in consideration of entering into this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the Crown granting its consent pursuant to Section 46 of the EPA and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

1. In this Agreement, "Crown" includes the Minister of the Environment and any agents, officers or servants of the Ministry of the Environment and any public servants working in or for the Ministry of the Environment.
2. The Owner agrees that the Crown assumes no responsibility for:
 - (a) the construction, operation and maintenance of anything on or near the Lands, and
 - (b) the giving of approval pursuant to Section 46 of the EPA.
3. The Owner hereby releases and undertakes to indemnify and save harmless the Crown from any claims, by whomsoever made, including costs and whether for property damages, personal injury or death or otherwise, relating directly or indirectly to the approval, the Lands or the use of the Lands or any nearby area and whether arising heretofore or hereafter and whether brought by the Owner or some other person arising out of negligence or otherwise and undertakes not to make a

claim in connection therewith against anyone to the extent they might have a claim against the Crown.

4. The Owner will register a Certificate of Requirement on the title of the Lands, which gives notice of the section 46 approval.
5. This Agreement shall enure to the benefit of and be binding upon the Parties hereto, their respective successors and assigns.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the date first above written.

Owner

per: _____
(Name and title)